had paid for, it would have been impossible for any court to say that they intended to perpetrate a fraud. But by their own choice, they had affixed the label on themselves. They cannot claim the same protection as purchasers for value without notice. In our opinion the grounds of appeal were frivolous and entirely without merit.

We accordingly dismissed the appeal with costs.

Appeal dismissed.

Solicitors: *Yeap & Yeap; Ngan & Tan; Lim Cheng Ean & Co.; Maxwell, Kenion, Cowdy & Jones.*

NEW INDIA ASSURANCE CO. LTD. v. PANG PIANG CHONG & ANOR.

[O.C.J. (Syed Othman J.) April 25, 1971]

[Johore Bahru — Civil Suit No. 10 of 1964]

Insurance — Motor insurance — Proposal — Statement that insured had not been convicted of offence "in connection with the driving of a motor vehicle" — Convictions for driving in contravention of statutory offences not related to act of driving — Whether statement did constitute a non-disclosure of a material fact or representation of fact which was false in some material particular — Whether insured who committed statutory offences a bad risk — Road Traffic Ordinance, 1958, s. 80 (3) & (5).

On a proposal by the first defendant, the plaintiffs insured his station wagon and himself against the usual third party risks for the period from July 17 to November 23, 1962. On October 8, 1962 the vehicle was involved in an accident in which one Abdon was killed. The insurers sought a declaration that they were entitled to avoid the insurance on the ground that "apart from any provision contained in the policy, the policy was obtained by non-disclosure of material facts and/or representation of a fact which was false in some material particular." One of the questions contained in the proposal was: "4. Have you or any person who to your knowledge will drive, been convicted during the past 5 years of any offence in connection with driving any motor vehicle?" The answer given was "No." The insurers said that the representation of fact contained in the answer was false in particulars which it was material to be known to them in or about the said policy, namely, that in truth and in fact the first defendant himself had been convicted during the past 5 years of offences in connection with the driving of motor vehicles. They also said that the first defendant by the answer failed to disclose facts material to be known to them in or about the making of the said policy. There was evidence that he had been convicted in the magistrate's court at Johore Bahru of five offences in all under the Road Traffic Ordinance on March 8, 1960 and on March 14, 1961.

The defence *inter alia* contended that assuming evidence concerning the proposal could be accepted, the offences which the first defendant had committed could not be said to be connected with the actual driving of a motor vehicle. The evidence showed that the offences the first defendant was convicted were statutory offences which did not relate to his act of driving.

The main question to be determined was whether the answer to question 4 in the proposal entitled the insurers to avoid the insurance in view of the conviction of the first defendant of the five offences.

Held, dismissing the application: (1) the statutory offences of which the first defendant was convicted in this case did not show that he was iresponsible for the purposes of an insurance cover and therefore he was not a bad risk;

(2) the first defendant's answer to the question did not constitute a non-disclosure of a material fact or representation of a fact which was false in some material particular.

Cases referred to:-

(1) *Revell* v. *London General Insurance Co. Ltd.* [1934] All E.R. Rep. 744.

(2) *Taylor* v. *Eagle Star* (1940) 67 Ll. L.R. 136.

(3) *Corcos* v. *De Rougemont* (1925) 23 Ll. L.R. 34.

APPLICATION.

T. G. Dunbar for the plaintiffs.

Peter Williams (*Tennakoon* with him) for the second defendant.

Syed Othman J.: On 17th July, 1962, on a proposal by the first defendant, the plaintiffs who are insurers, insured the first defendant's station wagon and the first defendant against the usual third party risks for the period from 17th July, 1962 to 23rd November, 1962. On 8th October, 1962, during the currency of the insurance, one Cheong Moi while driving the vehicle on the first defendant's order or with his permission was involved in an accident in which one Abdon bin Haji Dahalan was killed. On 20th October, 1963 the dependants of the deceased issued a writ in the High Court at Johore Bahru claiming damages against Cheong Moi for negligence. The policy covers such liability.

The insurers now seek a declaration that they are entitled to avoid the insurance on the ground "apart from any provision contained in the policy, the policy was obtained by non-disclosure of material facts and/or representation of a fact which was false in some material particular." One of the questions contained in the proposal is "4. Have you or any person who to your knowledge will drive, been convicted during the past five years of any offence in connection with the driving of any motor vehicle?". The answer given is "No".

The insurers say that the representation of fact contained in the answer was false in particulars which it was material to be known to them in or about the said policy, namely, that in truth and in fact the first defendant himself had been convicted during the past five years of offences in connection with the driving of motor vehicles.

They also say that the first defendant by the answer failed to disclose facts material to be known to them in or about the making of the said policy. He was convicted in the Magistrate's Court at Johore Bahru of five offences in all under the Road Traffic Ordinance, 1958, on 8th March, 1960 and 14th March, 1961.

The first defendant did not enter appearance to the writ of summons. On 28th December, 1967, leave was granted to the insurers to set down a notice for judgment. A notice of motion filed early in 1968 was fixed for hearing on 29th February, 1968 but the motion was withdrawn. On 4th July, 1968, an amended statement of claim was filed joining the second defendant

as a party pursuant to an order of court dated 18th March, 1964.

The defence of the second defendant, the widow of the deceased involved in the accident, is that she had no knowledge of the allegations contained in the statement of claim.

During the trial the assistant manager of the insurers was the only witness who gave evidence. No evidence was adduced on behalf of the second defendant but Mr. Williams, appearing for her, made submissions on points of law.

The assistant manager's evidence in substance is that on receiving the transfer of the policy from the original insured to the first defendant he approved it and that if the answer to question 4 had been "Yes" the transfer would have been refused as the convictions showed that the insured was an irresponsible person. He also says that the most insurers would not issue a policy to a person like the first defendant on usual terms.

In cross-examination he says that the proposal was dealt with by the insurance agents, who had received it. He cannot say if the first defendant signed the form.

The submissions of Mr. Williams are to the effect that: first, there was no proof that the first defendant had signed the proposal as it came from the agents and not the first defendant; secondly, the insurers have not complied with the proviso to subsection (3) of section 80 of the Road Traffic Ordinance 1958; thirdly, assuming evidence concerning the proposal can be accepted, the offences which the first defendant had committed cannot be said to be connected with the actual driving of a motor vehicle; fourthly, the first defendant was not the person who had driven the car when the accident occurred and the insurance also covered other persons authorized to drive by the first defendant.

As to the first submission, I agree with Mr. Dunbar, counsel for the plaintiffs, that in the circumstances of this case the court will have to presume that the proposal was made by the first defendant as the insurers received it in the common course of business; the name of the first defendant appears in the proposal and on the strength of this the insurance was issued to him. The first defendant has not entered appearance and a defence. It is a matter for him to challenge this aspect of the averments in the statement of claim.

As to the second submission, the proviso to subsection (3) of section 80 of the Road Traffic Ordinance, 1958 reads:

"Provided that an insurer who has obtained such a declaration as aforesaid in an action shall not thereby become entitled to the benefit of this sub-section as respects any judgment obtained in proceedings commenced before the commencement of that action unless, before or within seven days after the commencement of that action, he has given notice thereof to the person who is the plaintiff in the said proceedings specifying the non-disclosure or false representation on which he proposes to rely, and any person to whom notice of such an action is so given shall be entitled if he thinks fit to be made a party thereto."

I do not think that the proviso can be said to operate at this juncture as no declaration has yet been obtained. The proviso merely sets out the circumstances in which an insurer is not entitled to the benefit of that section unless he follows the procedure set out therein after obtaining the declaration.

The third submission brings me to the main question to be determined, which is, whether the answer of the first defendant to question 4 in the proposal entitles the insurers to avoid the insurance in view of the conviction against him of the five offences. Both counsel in their arguments cited the judgment of Mackinnon J. in *Revell* v. *London General Insurance Co. Ltd.*[1] The headnotes of the case are as follows:

"A policy of insurance against third-party risks was based on a proposal which contained the question: 'Have you or any of your drivers ever been convicted of any offence in connection with the driving of any motor vehicle?', to which the insured answered 'No'. The truth of the answers on the proposal form was the basis of the policy. The insured's driver had been convicted of two offences, namely, (i) of driving a motor vehicle without any suitable reflecting mirror, and (ii) of unlawfully using a motor vehicle without having in force an insurance policy against third-party risks.

Held: a reasonable person might honestly consider that neither of the two convictions was in connection with the driving of a motor vehicle, and the insurers could not, therefore, rely on this answer as entitling them to avoid the policy.

Per Curiam. If there is an ambiguity in a question in a question in a proposal form, so that upon one view of the reasonable meaning which is conveyed to the reasonable reader of it the answer was not false, the insurers cannot say that on the other meaning of the words the answer was untrue, so as to invalidate the policy."

The offences for which the first defendant was convicted of in 1960 were:

(i) driving a motor cycle on a public road without there being attached on the motor cycle a motor vehicle licence in contravention of Regulation 36(i) of the Motor Vehicles (Registration and Licensing) Regulations, 1954; and (ii) not displaying an 'L' plate in a conspicuous position while driving the said vehicle in contravention of Regulation 14(2) (c) punishable under Regulation 14(3) of the Motor Vehicles (Driving Licences) Regulations, 1952.

I do not think there is any need for me to set out in full the relevant provisions as the material parts are in the form which I have set them out.

As to (i), the requirement of the relevant regulation is that the motor vehicle licence must be attached to the motor vehicle at all times. The real offence is the first defendant's neglect to comply with the regulation. It cannot therefore be construed as to be connected with the act of driving.

As to (ii), in my view the real offence is the non-display of the 'L' plate; the act of driving is merely incidental.

In 1961, the first defendant was convicted of the following offences:

(a) an offence under section 22(1) of the Ordinance i.e. "using a motor vehicle while there is not in force in respect of the motor vehicle a motor vehicle licence";

(b) an offence under section 25(1) of the Ordinance, which provides "Except as otherwise provided in this Ordinance, no person shall drive a motor vehicle ... unless he is the

holder of a driving licence authorising him to drive a motor vehicle of that class or description";

(c) an offence under section 74(1) of the Ordinance, which provides "Subject to the provisions of this Part of the Ordinance it shall not be lawful for any person to use ... a motor vehicle unless there is in force in relation to the use of that vehicle by that person ... such a policy of insurance."

I shall deal with offences (a) and (c) together In substance the requirements of the law regarding these two offences relate to the motor vehicle which had no licence and no insurance cover. The real offence cannot therefore be said to relate to the act of driving.

As to (b) Mackinnon J. in *Revell* v. *London General Insurance Co. Ltd., supra,* said:

"The real offence, taking these two types of offences, is using a car without a reflecting mirror or without an insurance policy. In itself the offence has nothing to do with the careful or skilful manner or the careless or unskilful manner in which the car is being driven on the road, or its danger as a moving object."

In my view the fact that a person drives a motor vehicle with no driving licence has nothing to do with the careful or skilful manner in which it is being driven.

MacGillivray on Insurance Law, 5th edition, in paragraph 2077 (vol. 2) cited two cases covering this offence. I have not been able to see the full reports as the Lloyd's Law Reports are not available in the library here. The cases are *Taylor* v. *Eagle Star*[2] where a similar question in a proposal has been interpreted as not to include such offences as driving without a licence or insurance certificate; and *Corcos* v. *De Rougemont,*[3] where it was held that the fact that the insured had frequently driven without a licence was not material.

"Material", for the purpose of section 80(5) of the Road Traffic Ordinance, means of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk, and, if so, at what premium and on what conditions. The materiality of any particular misstatement or non-disclosure is a question of fact to be determined by the court. The purpose of an insurance as in this case is to cover the insured in the event of an accident. The primary concern of an insurer before he insures a proposed insured is therefore to determine whether he is a bad risk. I do not think that it should be the concern of a prudent insurer as to whether or not the proposed insured has committed an offence for non-compliance of statutory requirements which are not pertinent to show that he is such a risk. I cannot accept the assistant manager's contention that a person who has committed the statutory offence as in this case shows that he is irresponsible for the purpose of an insurance cover as there are more serious offences which can show that a person is more irresponsible than those the first defendant has been convicted of *e.g.* offences under the Penal Code. The insurers do not appear to concern themselves whether or not the proposed insured has committed any of the offences under the Penal Code. The real test for the purpose of this case, as has been indicated, is whether the proposed insured is a bad risk. I am unable to see that by the conviction of the five offences the first defendant is such a risk. I am therefore of the opinion that his answer to the question does not constitute a non-disclosure of a material fact or representation of a fact which was false in some material particular. On this ground, I do not consider that a case has been made out for me to make a declaration which the plaintiffs seeks.

I do not think there is any need for me to deal with the fourth submission of Mr. Williams.

The application is dismissed with costs to the second defendant.

Application dismissed.

Solicitors: *Murphy & Dunbar; Williams & Tennakoon.*

HAJI TAIB v. ISMAIL

[A.C.J. (Syed Agil Barakbah J.) April 27, 1971]

[Alor Star — Civil Appeal No. 7 of 1970]

Landlord and Tenant — Padi cultivator — Padi land — Tenancy agreement — Whether to be executed and registered under Padi Cultivators (Control of Rent and Security of Tenure) Ordinance, 1955 — Position of tenant where non-compliance.

Tort — Trespass — Tenant deprived of cultivating land subject to tenancy — Position where tenancy agreement not entered into in accordance with law — Whether landlord has better right — Whether actionable.

Contract — Contravention of statute — Breach of contract — No relief.

Equity — Expenses incurred in ploughing land in expectation of cultivation — Compensation in lieu of general damages.

This was an appeal against the decision of the president of the sessions court, Alor Star. The respondent, a padi planter, was tenant of 5 relongs of padi land owned by the appellant. He had occupied the said land for 18 years until June, 1966. Before 1958 the respondent was cultivating more than 10 relongs of the appellant's land, but sometime in that year the appellant took back half of the land. A tenancy agreement for the 1958/9 season to the extent of the remaining half portion (i.e. 5 relongs) was executed and duly registered under the Padi Cultivators (Control of Rent and Security of Tenure) Ordinance, 1955. The respondent thereafter continued to cultivate the land and paid rent accordingly to the appellant.

Sometime in 1963, on a request in writing by the appellant, the respondent paid rents to the appellant's nephew. Receipts of such payments were acknowledged by the nephew. The respondent was never in arrears of rent.

In June 1966, the respondent alleged that the appellant, without any notice whatever, occupied the said land by sending a tractor to plough it, thereafter planted it with padi and harvested it, when in fact he (the respondent) had already cultivated and prepared the land for planting. The respondent accordingly sought relief from the Padi Committee, Kota Star, under the Padi Cultivators Ordinance, and on July 30, 1966, the committee made an order allowing the respondent to execute a tenancy agreement with the appellant. The appellant refused to do so. No further action was taken by the respondent under the Ordinance and he continued to cultivate the land and paid rents to the appellant.

The respondent brought an action against the appellant for trespass and damages on the grounds that he (the res-